

Case Study:

Intermediary Liability Rules in Japan

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Laws and Guidelines in relation to Intermediary Liability in Japan

- ❑ Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Senders (the “Act”) was enacted in 2001
 - Covers all types of infringements, including without limitation, copyright and trademark infringement, defamation, and breach of privacy.
 - Applies to a “specified telecommunications service provider”
 - Including: bulletin board/website administrator, hosting service provider, and access provider
 - Not including: 1:1 communication (email, chat, messenger, etc.) provider
 - Article 3 regulates limitation of ISP’s liability for damages (not safe harbor).
 - ISP does not owe liability unless it (i) knew the infringement, or (ii) had knowledge of information distribution and there is a reasonable ground to find that it could know the infringement.
 - Article 4 regulates sender’s identification information disclosure requests

Laws and Guidelines in relation to Intermediary Liability in Japan (continued)

- Consultative meetings consisting of representatives from relevant industry associations created following guidelines
 - Guideline regarding Defamation and Breach of Privacy
 - Guideline regarding Copyright Infringement
 - Guideline regarding Trademark Infringement
 - Guideline regarding Sender's Identification Information Disclosure Request

- Guidelines describe the procedure to notify ISPs, the format to be used for notice, and recent ISP's standard practices based on judicial precedents.

- While not required by the Act, ISPs delete illegal information (e.g. obscenity, illegal drugs) subject to another guideline.

Review of Act and its Outcome

- ❑ The Act was reviewed from 2010 through 2011
- ❑ Despite many opinions were raised/discussed during the review, the decision was not to amend the Act.
 - (examples of topics discussed)
 - Notice and Takedown
 - Three strikes
 - Reasonable measures
 - Monitoring obligation
- ❑ Some minor changes were made to the ministerial order to include items subject to the identification disclosure request (e.g., SIM card identification number).
- ❑ System in Japan
 - ❑ Merit: Stakeholders are collaborating based on guidelines.
 - ❑ Demerit: ISPs are at insecure position without safe harbor, i.e. no incentive for expeditious takedown. Copyright takedown could be done faster.

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